

Date: September 5, 2021

Via Email
Lorne Mackenzie
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Traffic Rights Project Manager
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Canada
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Re: Equivalent Alternative Determination Request Concerning 14 CFR 382.67 and 382.123

To Whom It May Concern,

Please find the following request from Flair Airlines Ltd (Flair) for an Equivalent Alternative Determination (EAD) concerning the requirements for stowage of a passenger's manual folding wheelchair referred to in 14 CFR 382.67 and 382.123 of the Department's Air Carrier Access Act (ACAA) regulation.

Flair will ensure compliance with applicable regulations to place manual folding wheelchairs in cargo pits of its aircraft to accommodate up to two typical adult-sized folding, collapsible, or break-down manual passenger wheelchairs.

Flair is a low-cost carrier based in Edmonton Alberta Canada.

EAD Request Overview

Proposed Equivalent Alternative

Based on specific procedures the Department has approved several times in the past for both Boeing and Airbus aircraft, Flair Airlines Ltd., hereafter referred to as Flair, has developed an equivalent alternative method of compliance for its Boeing 737- 800 NG and Boeing 737-7, 8 and 9MAX aircraft that will ensure accessibility equivalent to an in-cabin stowage space. Like other operators for whom EADs were approved, Flair will utilize a portion of the aircraft cargo compartment as a designated space for the stowage of up to two wheelchairs in lieu of an in-cabin priority space.

Additionally, Flair will (i) dedicate exclusive space (position 12) for up to 2 manual wheelchairs that will be fully contained by the fuselage on one side and essentially floor to ceiling cargo netting on the remaining three sides of the space; (ii) place each chair in a protective bag to minimize the potential for damage and protect the chair from the elements; (iii) provide passengers with the flexibility to check their wheelchairs wherever they prefer and receive it wherever they prefer, and; (iv) provide passengers with the flexibility to receive wheelchairs at the aircraft door on arrival.

The cargo configurations of Flair's Boeing 737-800 NG and Boeing 737- 8 and 9MAX aircraft are very similar. Exhibit A shows the layout of the Boeing 737 aircraft belly storage area and shows the storage space Flair will dedicate exclusively for wheelchairs.

When wheelchairs are stowed in the dedicated portion of the cargo compartment, Flair will not stow passenger bags or other cargo or equipment in the same area. Passengers will be able to use their wheelchairs up until boarding the aircraft or up to the gate if they prefer. A Flair employee will then manually check the wheelchair and the passenger will be given a bag check receipt that includes the passenger's name, flight number, destination, and location where the wheelchair will be returned to the passenger upon arrival at his destination.

A Flair employee will then fold or break-down the wheelchair in accordance with instructions, if provided, and the ground crew will place the wheelchair in the dedicated space in the belly storage area of the aircraft. Flair's personnel at the destination airport will have advance notification that there is a door delivery item in the cargo compartment and will follow established procedure to ensure the wheelchair(s) are the first item removed from the cargo compartment and returned to the passenger at the pre-arranged delivery point.

Flair will train all personnel with responsibility for these procedures to ensure smooth handling of passenger wheelchairs and that wheelchairs are properly folded, broken down, bagged, loaded, stored, transported and redelivered. Flair will provide this service without charge for up to two wheelchairs and will waive any applicable liability limits for those wheelchairs. Further, Flair will arrange a temporary replacement (or rental reimbursement, at the passenger's option) wheelchair of like kind and quality in the event a wheelchair is damaged under these procedures.

Flair states that we intend to commence operations to and from the United States using Boeing 737-800 NG and Boeing 737 Max aircraft. Flair declares that these aircraft do not have sufficient space to accommodate a wheelchair stowage closet, and that retrofitting those cabins to install a stowage space large enough to accommodate a passenger wheelchair would require expensive changes to the interior of the aircraft, including loss of seating capacity.

As an alternative to the closet and seat-strapping methods identified in section 382.67(a), Flair proposes a method by which passengers manual wheelchairs would be stored in a dedicated space in the aircraft's cargo hold. Flair contends that this method would provide substantially equivalent accessibility to the methods described in section 382.67(a).

Specifically, Flair contends that passengers would be able to get as close to the aircraft as possible in the wheelchair before enplaning; the wheelchair would be protected in the cargo hold; and the wheelchair would be returned promptly after deplaning. Flair notes that the Department has granted similar EAD requests for other carriers using Boeing 737-800 NG aircraft. Flair states that it would comply with the same conditions that the Department has imposed on carriers that have obtained EADs with respect to those aircraft.

Flair is seeking EAD request for sections 382.67 and 382.123 for a one-year trial basis, to be extended indefinitely with US DOT approval, so that it can utilize priority stowage space in the cargo compartment of its aircraft to stow two manual folding wheelchairs in lieu of having an in-cabin priority stowage space for at least one passenger's manual folding wheelchair, and intends to ensure the following conditions are met:

1. This approval is limited to Flair's Boeing B737-800 NG and Boeing 737 Max aircraft with the configurations described in the Annexes and this request and would be subject to the stowage requirements described in section 382.67. Flair will obtain the Department's prior approval for any deviations from the method of stowing a passenger's manual folding wheelchair set forth in Flair's requests.
2. If at any point DOT determines that Flair is not providing the same or greater accessibility to passengers with a disability as provided by sections 382.67 and 382.123, we understand the DOT reserves the right to terminate this approval. If the approval is terminated, Flair will expeditiously comply with section 382.67 by retrofitting or modifying the aircraft to include a priority closet in the passenger cabin, or by using the seat-strapping method;
3. Flair's designated wheelchair cargo stowage space will be capable of stowing at least two manual folding wheelchairs and each wheelchair will be placed in a protective stowage bag and secured horizontally to prevent unnecessary movement during flight;
4. Flair will ensure that up to two passengers with a disability who use a manual folding wheelchair and take advantage of the opportunity to preboard the aircraft can stow their manual folding wheelchairs in Flair's designated wheelchair cargo stowage space with priority over all other items. For a passenger who does not take advantage of the opportunity to preboard the aircraft, Flair will make a reasonable effort to stow the passenger's manual folding wheelchair in its designated wheelchair cargo stowage space;

5. Flair will ensure that no other items are stowed in its designated wheelchair cargo stowage space if one or more folding wheelchairs are being stowed in that space;
6. In addition to stowing at least two passenger's manual folding wheelchairs in its designated wheelchair cargo stowage space, to the extent permitted by government safety standards, Flair will also stow in the passenger cabin, passengers' manual folding wheelchairs in the overhead compartments or other stowage areas if passengers make such requests, and the devices can physically be stowed in such space. If the wheelchair exceeds the space while fully assembled but will fit if wheels or other components can be removed without the use of tools, Flair will remove the applicable components and stow the wheelchair in the passenger cabin;
7. Flair will not limit its liability for a lost or destroyed wheelchair or a wheelchair damaged beyond repair in the designated wheelchair cargo stowage space to the liability limit provided in the Montreal Convention, or any other applicable treaty or law. Flair will calculate the compensation owed to a passenger for a lost or destroyed wheelchair or a wheelchair damaged beyond repair in the designated wheelchair cargo stowage space, as the original purchase price of the device;
8. Flair will use its best efforts to promptly provide a temporary replacement wheelchair of comparable kind and quality at no charge to the passenger if a passenger's wheelchair is delayed, lost, damaged, or destroyed while in Flair's custody. Flair will not limit its liability for providing a temporary replacement wheelchair to the liability limit provided in the Montreal Convention, or any other applicable treaty or law. These efforts will be documented, retained for three years, and available to the Department upon request;
9. Flair will ensure that a passenger's manual folding wheelchair stowed in the designated wheelchair cargo stowage space is the first item off the aircraft after landing and is delivered to the passenger at the door of the aircraft as soon as the passenger deplanes the aircraft, unless the passenger requests to reclaim the wheelchair at Flair's baggage claim or gate area;

10. Flair will allow a passenger to remain in his or her personal wheelchair up to the door of the aircraft, unless the passenger agrees to relinquish his or her wheelchair at a different location;

11. Flair will use its best efforts to prevent weather conditions from negatively impacting on the condition of the wheelchair when it is returned to the passenger (e.g., placing a cover on a wheelchair to prevent exposure to the rain or the hot sun);

12. Flair will provide, or ensure the provision of, specialized training to its employees and contractors, as well as the employees and contractors of any other entity, that will be involved with the stowing of a passenger's manual folding wheelchair in the designated wheelchair cargo stowage space. The specialized training will ensure training to proficiency in how to properly stow a passenger's manual folding wheelchair in the designated wheelchair cargo stowage space, pre-departure procedures to ensure the passenger's wheelchair is placed on the aircraft, post-landing procedures to ensure that the passenger's wheelchair is the first item removed from the aircraft, proper procedures to follow if a wheelchair is lost, damaged, or destroyed, and the proper procedures to obtain a temporary replacement wheelchair for a passenger; and

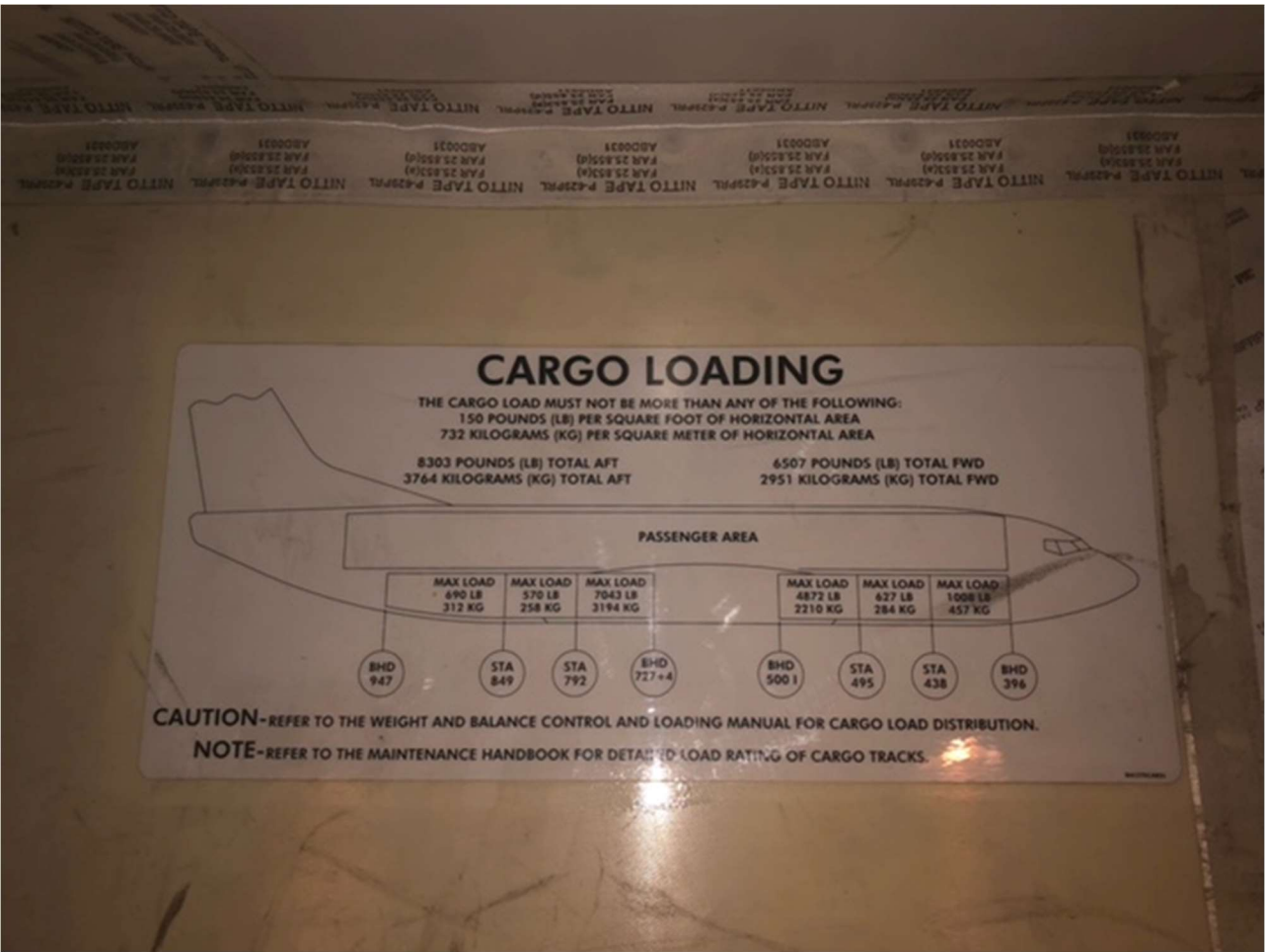
13. Flair will also provide this office with copies of all complaints, or a certification that there were no complaints, regarding the stowage of a passenger's wheelchair in the designated wheelchair cargo stowage space every year. Flair will also provide the DOT with copies of all claims, or a certification that there were no claims, submitted by passengers with respect to wheelchairs that were damaged in the designated wheelchair cargo space identified in paragraph 3, above. For each such claim that Flair received, Flair will also provide this office with copies of documents reflecting the disposition of that claim. Flair will submit this information by the last Monday in January of each year for complaints and claims received during the prior calendar year. This submission is separate from the annual disability-related complaints report that is to be submitted at the same time in accordance with section 382.157(h).

Flair will also retain correspondence and records of action taken on all complaints and claims related to wheelchair stowage for three years after receipt of the complaint/claim or creation of the record of action taken and will make these records available at the Department's request.

The information described above will be submitted electronically to the attention of both Robert Gorman (robert.gorman@dot.gov) and Karla Hammonds (karla.hammonds@dot.gov).

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Exhibit A







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